



## Protection of Conscience Project

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# The Case of the Disappearing Plaintiffs

Robert Baxter *et al* vs. State of Montana

Sean Murphy, Administrator  
Protection of Conscience Project

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In December, 2008, Montana District Court Judge Dorothy McCarter ruled that Montana citizens who are competent and terminally ill have a legal right to assisted suicide based on the State's constitutional recognition of individual privacy and human dignity. The case was launched by Compassion and Choices, a euthanasia/assisted suicide advocacy group. It is now under appeal, but the ruling stands as the law of Montana pending review by the State Supreme Court.

Taking a strict view of the terms of the ruling, it authorizes physicians to prescribe lethal medication for competent, terminally ill patients, but the patients must self-administer the drug. If the ruling is affirmed by the State Supreme Court, it is unlikely that the strict view will prevail in the long term. It is more likely that, upon the request of a patient (or legal proxy), someone other than the patient will be able to administer the lethal prescription.

Commenting on the judgement, Project Advisor Dr. John Fleming notes that it does not provide for situations in which a patient is unable to ask for a prescription. If the ruling stands, he thinks it likely that more cases will be brought to determine the reach and scope of "assistance." This could transform the purported "constitutional right" to assisted suicide to a "constitutional right" to direct, active euthanasia.

## Implications for freedom of conscience

What warrants closer attention by those concerned about freedom of conscience in health care is another aspect of the judgement. The court ruled that the legal right to assisted suicide "necessarily incorporates the assistance of his doctor, as part of a doctor-patient relationship, so that the patient can obtain a prescription for drugs that he can take to end his own life, if and when he so determines."

Given a competent terminal patient's right to determine the time to end his life, in consultation with his physician, the method of effecting the patient's death with dignity would require the assistance of his medical professional. The physician-patient relationship would enable the terminal patient to consult with his doctor as to the progress of the disease and the expected suffering and discomfort, and would enable the doctor to prescribe the most appropriate drug for life termination, leaving the ultimate timing and decision up to the patient.

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But for such a relationship, the patient would increasingly become physically unable to terminate his life, thus defeating his constitutional right to die with dignity. If the patient were to have no assistance from his doctor, he may be forced to kill himself sooner rather than later because of the anticipated increased disability with the progress of his disease, and the manner of the patient's death would more likely occur in a manner that violates his dignity and peace of mind, such as by gunshot or by an otherwise unpleasant method, causing undue suffering to the patient and his family.<sup>1</sup>

The explanation offered by the court for the right to have the assistance of a physician is essentially the same rationale advanced by those who support physician involvement in other controversial procedures, such as abortion,<sup>2</sup> the amputation of healthy body parts<sup>3</sup> or adult female circumcision.<sup>4</sup>

A claim that a patient has a legal right to the assistance of a physician to commit suicide is uncomfortably close to a claim that patients can force their physicians to participate in the procedure. It is thus significant that Compassion and Choices seeks the repeal of a federal protection of conscience regulation. The regulation, it claims, "thwart[s] good medical care for the sake of religious zealotry."<sup>5</sup> Moreover, since the Baxter ruling, spokesmen for the group have repeatedly stated that physician assisted suicide is a "constitutional right" in Montana, and they have emphasized that the ruling has created a "new legal landscape" in the state.<sup>6</sup>

Nonetheless, to say that a patient has a legal right to have assistance is not the same as saying that a patient has a legal right to demand it, or to demand it from a particular individual. The court appears to have recognized this distinction, which is implicit in its statement that the legislature can enact a law "that excludes physicians who do not wish to participate" and can adopt "legislation and guidelines" to protect objecting physicians.<sup>7</sup>

Moreover, even if one accepts the claim that a legal right to assisted suicide can be found in Montana's constitution, the ruling can be criticized as overly broad. It unnecessarily conscripts a class of persons (physicians and health care providers) as suicide assistants. If the goal is to ensure that a patient can have a quick and painless death with lethal medication, it does not follow that the participation of physicians or health care workers is required. All that is necessary is knowledge and competence in prescribing lethal medication.

### **Immediate consequences**

The two patients who were plaintiffs in the case were 75 year old Robert Baxter and 53 year old Steven Stoelb. In launching the complaint in October, 2007, Compassion and Choices said they were "approaching the end of their lives and have no reasonable prospect of recovery." According to Compassion and Choices, Baxter was "terminally ill with lymphocytic leukemia" and Stoelb "terminally ill with Ehlers Danlos Syndrome (EDS)."<sup>8</sup> However, the Baxter decision did not lead to the assisted suicide of either patient. Robert Baxter succumbed to his illness in his sleep the day the ruling was issued.<sup>9</sup> Stoelb withdrew as plaintiff during the course of the hearings because "his medical condition presented a contested issue of material fact."<sup>10</sup>

Since EDS is not classed as a terminal illness (though it is incurable, and one form of it can have

fatal complications)<sup>11</sup> it appears that Stoelb withdrew to avoid examination of the claims made about the nature of his illness or the prospects for its palliation. Nonetheless, Compassion and Choices continues to refer to him as a "terminal patient" and represent him as a plaintiff.<sup>12</sup>

### **The disappearing plaintiffs**

The most interesting aspect of the Baxter case concerns the four physician plaintiffs: Stephen Speckart, MD, C. Paul Loehnen, MD, Lar Autio, MD, and George Risi Jr. MD.<sup>13</sup>

The four physicians have impressive credentials. For example: Dr. Stephen Speckart was involved in founding a hospice and served as a hospice board member and medical director. He also developed a local chapter of Physicians for Social Responsibility. Dr. Autio has served as medical director of nursing homes. Dr. Risi is a reviewer for professional journals and part of the clinical faculty of the University of Montana School of Pharmacy. C. Paul Loehnen, MD, has practised medicine for over forty years and has been Clinical Associate Professor of Medicine and the University of Washington in Seattle since 1987.

In their affidavits the four physician plaintiffs recounted their sometimes harrowing experiences in treating terminally ill patients. Referring to competent, terminally ill patients who want to die in order to avoid prolonged suffering, Dr. Loehnen, Dr. Autio and Dr. Risi stated that their "professional obligation to relieve suffering" would sometimes dictate that they assist such patients in hastening their deaths (or, as Dr. Risi put it, "provide aid in dying"). Dr. Speckart was not as explicit, affirming, instead, his professional obligation "to be sympathetic and understanding of their terminal circumstances and try, within the law, to be present and maximally supportive of the dying patient."<sup>14</sup>

It is clear that in using the terms "hastening death", "aid in dying" and being "maximally supportive of the dying patient," all four physicians were referring to assisted suicide. All four stated that Montana's homicide statutes had deterred them from providing the kind of "care" they believed their patients needed. In virtually identical passages, their affidavits each stated that the deterrent effect of Montana's homicide statutes had sometimes resulted in "patients . . . dying tortured deaths."<sup>15</sup>

Turn now to the story of Janet Murdock, a 67 year old Massoula resident with terminal ovarian cancer. Despite the Baxter ruling, her own physician refused to give her a prescription for lethal medication. In April, 2009, four months after winning the Baxter case, Steve Hopcraft and Kathryn Tucker of Compassion and Choices held a press conference about Murdock's situation.<sup>16</sup>

Hopcraft stated that they were authorized to speak on her behalf because she was too weak to participate in the conference or do personal interviews. He read a statement from Murdock:

I feel as though my doctors don't feel able to respect my decision to choose aid in dying. Access to physician aid in dying would restore my hope for peaceful, dignified death in keeping with my values and beliefs. I have suffered so much, that I have considered throwing myself into a snowbank to die of hypothermia. Does Montana's medical community care more about anti-choice extremists who may disapprove, or about people like me, who may suffer and be left to an unbearably painful end of life?

The reason for calling the press conference, he explained, was the hope "that Janet's appeal today for

aid in dying will prompt a willing physician to come forward and contact Compassion and Choices." Hopcraft said that they would put willing physicians in touch with Murdock's family and caregivers.

In fact, no Montana physician came forward. Janet Murdock "died of physical deterioration caused by ovarian cancer" on 14 June, 2009.<sup>17</sup> A Compassion and Choices news release announced her death:

. . . Murdock spent nearly two months trapped in a dying process, which she found unbearable, and ultimately she brought the process to an end by giving up food and fluid.<sup>18</sup>

According to the release, Murdock accelerated her death by giving up food and fluids, which contributed to her misery in her final days. It quoted Murdock's daughter, who asked if it was "fair and right and moral, to stand by and watch someone die a death you wouldn't want to wish on your worst enemy." A friend described her death as "cruel and unusual punishment."<sup>19</sup>

Janet Murdock lived in Missoula, a city with a population of about 64,000.<sup>20</sup>

So did the four plaintiff physicians.

Janet Murdock lived in Missoula with the four physicians, who, citing their "professional obligation to relieve suffering," convinced a judge to legalize assisted suicide in Montana. Where were they in Janet Murdock's 'hour of need'?

The question occurred to reporters covering the Compassion and Choices news conference. Their exchanges with Tucker and Hopcraft are transcribed below, with some commentary.

**Dan Person, Bozeman Chronicle:**

Q) Um, as I understand, there were four physicians that were involved, uh, in the, in the Baxter, uh, lawsuit. Where, where are, those, those physicians? Are they, are they hesitating on, on, uh, practising, uh, this treatment?

**Kathryn Tucker, Compassion and Choices**

A) Well, you know, none of them provides care to Janet Murdock, and so, um, you know, we don't know if she had been one of their patients if they would feel comfortable. . .

If Compassion and Choices did not know how the plaintiff physicians would have handled Murdock's request, it would seem that the organization did not contact them before making the state-wide appeal. In any case, Tucker later reneges on this point.

**Kathryn Tucker (continuing)**

. . . I mean obviously we know from their statements in the lawsuit that they support patients such as Janet being empowered to make this choice, and they were expressing their support for providing that care if it were something they could do without fear of prosecution. . .

In her comments preceding questions from reporters, Tucker had made clear that

physicians could prescribe lethal medications for terminally ill, competent patients without fear of prosecution.

It's important to get the word out to physicians that if they are caring for dying patients and the patient wants to make this choice that they, the physician can provide a prescription to that patient without fear of criminal prosecution.

In response to later questions she explained that this would be the case even if the state Supreme Court reversed the lower court ruling. She repeatedly emphasized that physicians who wrote lethal prescriptions for terminally ill patients were legally "safe" in so doing.

**Kathryn Tucker (continuing)**

. . . So, you know, certainly if she were among their patients I would feel confident saying they would provide this care to her. . .

Compare this to her earlier assertion that she did not know "if they would feel comfortable."

. . . Um, she's not one of their patients. And so, you know that's part of the problem, is it's very difficult late in an illness to transfer care. Uh, so, you know, that's why I'm encouraging that patients start these conversations early if it's clear that their provider would not be willing, that they begin the process of transferring care when they're still relatively well, uh, so that this problem doesn't arise. . .

Three points are relevant here.

- It is not clear that a complete transfer of care would have been required, since the only thing Murdock needed was a prescription for a lethal drug.
- The fact that Compassion and Choices was appealing to any Montana physician to "come forward" suggests that transfer of care was not, in fact, an obstacle. At any rate, it could not have been an insurmountable obstacle. Indeed, it is reasonable to believe that it would have been less an obstacle for any of the four plaintiff physicians living in Missoula than for doctors living elsewhere in the state.
- Transfer of care from an objecting physician is expressly provided for in euthanasia and assisted suicide statutes in Washington State, Oregon and in Belgium.<sup>21</sup>

A reporter returned to the issue of transfer of care later in the conference:

**Unidentified reporter:**

Q) The, the request for other, for physicians to step forward. Uh, one of you earlier said that it's difficult at this stage of a terminal illness to transfer care.

**Kathryn Tucker, Compassion and Choices**

A) Yes.

**Unidentified reporter:**

Q) How difficult? I mean, what is, what is the problem there?

**Kathryn Tucker, Compassion and Choices**

A) Well, I mean typically, um, you know a patient like Janet Murdock as you've heard, is very, very weak, has extremely limited ability to effectuate any kind of change. Even have a conversation. Um, and so, you know, going about the business of identifying, locating, interviewing a new physician, um, and then transferring care, you know that's a very overwhelming thing for someone who's dying. . .

It would appear, nonetheless, that Murdock (or someone acting for her) was able to contact Compassion and Choices, evaluate their services and *bona fides*, make arrangements for the public appeal, and authorize Tucker and Hopcraft to speak for her. Presumably, Compassion and Choices would assist with "the business of identifying, locating, interviewing a new physician" etc.

**Kathryn Tucker (continuing)**

. . . There's also, you know, a lot of, um, loyalty that's developed over the course of care and I think a patient is typically quite reluctant to make an abrupt change in care when they're ill. So you have all of those practical realities that make it very very hard.

While this may be true, it is also true that Murdock's statement evinces a sense of betrayal rather than loyalty.

It is very difficult to believe that the four plaintiff physicians did not respond to Murdock's appeal simply because of some difficulty in transfer of care. In fact, the next question and answer suggest that the alleged difficulties in 'transfer of care' was merely a lame excuse: perhaps, even, a smokescreen.

**Unidentified reporter:**

Q) So, the request for physicians to come forward, is, is to what, to serve what purpose?

**Kathryn Tucker, Compassion and Choices**

A) Well, yes. I mean certainly if a physician came forward and identified themselves, um, to Compassion and Choices and we put that physician in touch with the patient, or if the physician reached out to the patient directly it's possible that that could be accomplished. Um, and so we do hope that that will happen here. . .

In other words, all a willing physician had to do was make a phone call. And the four physician plaintiffs could have made that call without long distance charges. This continued to puzzle one of the reporters:

**Dan Person, Bozeman Chronicle:**

Q) Um, uh, Katherine . . . I, I guess I, I'm still unclear on why, um, why there aren't at least four physicians now coming forward um, uh, to offer Montanans this care, and then a, a second question that, that that came to me, and this might be belying my, my ignorance of the medical profession, but wh . . . is, is the medication available in

Montana pharmacies now, that, that they would be prescribing?

An interviewer who asks two questions at once gives his subject the opportunity to respond to only one of them. That is what happened here. Tucker answered the question about the availability of lethal medications and ignored the question about the four physicians. That was addressed by her colleague:

**Steve Hopcraft, Compassion and Choices**

And in terms of the physician question, of course, you know, we haven't polled Montana physicians to see how each of them might feel about this particular ruling. Now, that would be the only way to know, and as Katherine was saying that these are very private of course medical conversations that don't necessarily, um, become known to any third party, especially ourselves. . .

Hopcraft did not have to poll the four plaintiff physicians to discover their opinions; he had their affidavits, and, presumably, their contact information.

**Steve Hopcraft (continuing)**

. . . We do know . . . that, broadly speaking, both the public and physicians overwhelmingly support terminally ill patients having the right to make this choice, to die with dignity.

Um, that's been confirmed by, uh, uh, polls of physicians which said not only do they support it but that the overwhelming majority want it for themselves, want this choice for themselves, were the physicians themselves to be terminally ill.

Um, so we do know that the broad indicators are there, and we assume that the majority of Montana physicians, like the majority of physicians in all other states, do support this. That is why we're making the appeal today. . .

**Unidentified reporter**

With those doctors and physicians not coming forward, you know, what, I guess, what are the options? I mean, has the, um, you know, there's uh, there's not many out there, but I guess you know four, um (coughing). . . Excuse me, um you know, for the Massoula woman, you know, what, uh, I guess, other than, you know, sitting in the hospice care, what are her options out there?

The availability of the four plaintiff physicians was also recognized by this reporter, and the question might have taken a slightly different turn had he not been seized by a coughing fit. At any rate, by the end of the news conference the first question had still not been answered.

**Where were they?**

Where were the four plaintiff physicians?

They all lived in Missoula. They all believed that they had a professional obligation to relieve suffering. They all believed that this professional obligation justified assisted suicide. All four

complained that they had been prevented from assisting in suicide because of Montana's homicide statutes. All four had gone to court to help to overturn those statutes so that they could provide assisted suicide, so that no one would have to endure what they called "a tortured death." And, at least as far as the public record is concerned, not one has since modified his views.

Even after the April news conference, not one of them was willing to give Janet Murdock the lethal prescription she was seeking. Having joined Compassion and Choices in the battle to legalize assisted suicide in Montana, they seem to have gone missing in action just when they were most needed.

Why?

### **Exploring the options**

Tucker and Hopcraft claimed that polls show that American physicians overwhelmingly support assisted suicide, and that Montana physicians probably felt the same way. Why, then, were they unable to find a single Montana doctor willing to write a lethal prescription for Janet Murdock?

The first obvious answer is that physicians who support assisted suicide or euthanasia in polls are not necessarily willing to provide it themselves.<sup>22</sup> But this was not the case with the four physician plaintiffs, and they were certainly not unaware of the Baxter ruling. In fact, the lame explanation offered by Compassion and Choices does not withstand scrutiny.

### **Ethical considerations**

While the Montana Medical Association (MMA) initially took a "neutral" attitude on the question,<sup>23</sup> it adopted a policy against assisted suicide five weeks before the news conference.<sup>24</sup> This was summed up afterward by the Association President. Assisted suicide, he said, "is really against our ethics."<sup>25</sup> If this did not change the views of the four plaintiff physicians, they may, nonetheless, have felt constrained by the opinion of their colleagues. The possibility was not explored at the press conference because Compassion and Choices did not bring up the MMA's position.

### **Legal considerations**

Tucker repeatedly emphasized that the Baxter ruling protects Montana physicians who write lethal prescriptions for terminally ill, competent patients. Her opinion on this point may be correct, at least with respect to criminal prosecution. But there are other relevant opinions that Tucker did not disclose.

Speaking in January, 2009, a spokesman for the Attorney General of Montana pointed out that Washington and Oregon have defined the key terms, "competent" and "terminally ill," but the Baxter ruling does not. Hence, he said, "a doctor would be very concerned with what those are before any type of prescription is written." And he would not say whether or not the state would prosecute a physician who wrote a lethal prescription for assisted suicide.<sup>26</sup> This, of course, is quite apart from the possibility that a physician might be sued by family members.

Compassion and Choices insists that "comprehensive, candid information" must be provided so that people can "make valid decisions and give informed consent" for treatment.<sup>27</sup> The principle is sound,



but it applies not only when patients are advised by physicians on a course of treatment, but when physicians are advised by lawyers on a course of conduct. Reporters, too, want "comprehensive, candid information." Reporters and physicians received something less than this at the Compassion and Choices news conference.

The point here is that the perspective of an activist lawyer anxious to further her cause is different from that of a Montana physician weighing the risks of involvement with assisted suicide. It is possible that the four plaintiff physicians continued to be deterred by Montana's homicide statutes.

### **Considerations of perspective**

We do not know whether or not Janet Murdock consulted with any of the four physician plaintiffs (or any doctor other than her personal physician) before she died. Nor do we know the reason why her own physician would not give her a prescription for lethal medication. Such consultations are privileged.

However, we do know that, from such consultations, physicians develop a personal understanding of patients and their circumstances that guides them in providing treatment and care. Moreover, physicians differ in sensitivity, experience, knowledge and world views, so it would not be surprising to find that different physicians might have different opinions about the same patient. Certainly, some opinions might be sound and others erroneous, but even among a variety of sound opinions there can be differences of depth and comprehensiveness.

Janet Murdock appears to have written her own obituary.<sup>28</sup> In describing her final months, it presents a marked contrast to the tone and content of the Compassion and Choices news release that announced her death.<sup>29</sup>

It is possible that physicians personally or professionally acquainted with the person and circumstances described in Janet Murdock's obituary might develop a different view of her condition and prospects than that of the author of the Compassion and Choices news release.

Let us suppose that one of the four physician plaintiffs did see her. Even if the views on assisted suicide expressed in his affidavit remained unaltered, and even if he was not concerned about the ethical opinions of his colleagues or the possibility of being prosecuted or sued, it does not follow that he would provide her with a lethal prescription. Depending upon his assessment, he might - or he might not.

This point is often overlooked, but it is important. Even health care workers willing to provide assisted suicide in some circumstances may, for reasons of conscience, be unwilling to provide it in others. Moreover, their willingness may change over time. This is true of abortion,<sup>30</sup> and there is no reason to think that it is not also true of euthanasia, assisted suicide or other morally controversial procedures.

### **Summing up**

The mystery of the disappearing plaintiffs remains unresolved, but, as Sherlock Holmes once remarked to Watson, the case has not been entirely devoid of interest. A number of observations and conclusions are relevant to freedom of conscience in health care. With respect to the legalization

of morally controversial services:

- Extensive consultation with those who may be expected to provide the services is required.
  - Failure to do so will almost certainly cause serious conflict between the expected providers and those seeking the services.
- Whole professions or classes of persons should not be conscripted into a scheme for the provision of such services by judicial dictate or legislative fiat.
- In legislation or judicial decisions, the nature and content of "rights" claims must be clearly established.
  - It is one thing to assert that one has a "right" to X, meaning only that X is not prohibited by law.
  - It is quite another to claim that X is a right that imposes an obligation to provide it on the state or another person or class of persons.

Concerning the participation of physicians as plaintiffs in litigation intended to legalize morally controversial services:

- Having been persuaded to become a plaintiff on the basis of facts alleged in a formal complaint, the physician may discover during the hearings that some of the "facts" do not withstand scrutiny.
- Successful litigation may yield a ruling that goes beyond what a physician plaintiff anticipates, and perhaps what he intends. Alternatively, it may set a precedent for cases that will lead to such rulings.
- Particularly when legalization is based upon a claim of rights, the participation of physician plaintiffs may result in the conscription of their profession, including colleagues who do not share their views.
  - This suggests that professional associations should intervene in such cases to ensure that competing interests are recognized and adequately protected.
- Physician plaintiffs become public persons who should expect to be publicly called to account for what they do or fail to do in relation to the subject of litigation.
  - If this happens, they may find it impossible to explain their actions because of the need to preserve confidentiality of communications with patients or colleagues.

Finally, comparison of Janet Murdock's autobiographical obituary with the news release from Compassion and Choices affords a sobering and poignant reminder that dying from terminal illness can involve different kinds and layers of emotion and attitudes, and complexity that does not lend itself to sloganeering.

## Notes

1. Montana First Judicial District Court, Lewis and Clark County, Cause No. ADV-2007-787, *Robert Baxter et al v. State of Montana*, Decision and Order, 5 December, 2008. ([http://www.compassionandchoices.org/documents/McCarter\\_Opinion\\_Montana.pdf](http://www.compassionandchoices.org/documents/McCarter_Opinion_Montana.pdf)) Accessed 2009-07-15.
2. "Barriers to abortion care endanger women's health by forcing women to delay the procedure, compelling them to carry unwanted pregnancies to term, and leading them to seek unsafe and illegal abortion services." NARAL Pro-choice America Foundation, *The Safety of Legal Abortion and the Hazards of Illegal Abortion* (1 January, 2009). (<http://www.prochoiceamerica.org/assets/files/Abortion-Access-to-Abortion-Science-Safety-of-Legal-Abortion.pdf>) Accessed 2009-07-15.
3. Bioethicist Carl Elliott, discussing the phenomenon of apotemnophilia, reported that one woman had unsuccessfully tried to induce gangrene in her legs, and was considering other self-inflicted injuries -like lying under a train - that would necessitate amputation. In researching his article he interviewed an amputee who had used a log splitter to precipitate eventual surgical amputation. Elliott, Carl, "A New Way to be Mad". *The Atlantic Monthly*, December, 2000. (<http://www.theatlantic.com/doc/200012/madness>) Accessed 2009-08-03.
4. Cantor, Julie D., When an Adult Female Seeks Ritual Genital Alteration: Ethics, Law and the Parameters of Participation. *Plastic and Reconstructive Surgery*, 117(4), 1 April, 2006, 1158-1164
5. The Official Compassion and Choices Blog, *Make your voice heard! Tell Obama to rescind the HHS conscience regulation*. 19 March, 2009. (<http://compassionandchoices.org/blog/>) Accessed 2009-07-15
6. Compassion and Choices Press Conference re: Janet Murdock, 3 April, 2009. ([http://www.compassionandchoices.com/documents/Janet\\_Murdock\\_PressConf\\_April09.mp3](http://www.compassionandchoices.com/documents/Janet_Murdock_PressConf_April09.mp3)) Accessed 2009-07-14
7. Montana First Judicial District Court, Lewis and Clark County, Cause No. ADV-2007-787, *Robert Baxter et al v. State of Montana*, Decision and Order, 5 December, 2008. p. 22, lines 1-3. ([http://www.compassionandchoices.org/documents/McCarter\\_Opinion\\_Montana.pdf](http://www.compassionandchoices.org/documents/McCarter_Opinion_Montana.pdf)) Accessed 2009-07-15
8. Montana First Judicial District Court, Lewis and Clark County, Cause No. ADV-2007-787, *Robert Baxter et al v. State of Montana*, Complaint, 17 October, 2007, p. 3-4. Signed by Mark S. Connell, Attorney for the Plaintiffs. ([http://www.compassionandchoices.org/documents/Baxter\\_complaint.pdf](http://www.compassionandchoices.org/documents/Baxter_complaint.pdf)) Accessed 2009-07-15
9. The Official Compassion and Choices Blog, *Montana Court Affirms Right To Die*, 9 December, 2008. (<http://compassionandchoices.org/blog/?p=131>) Accessed 2009-07-15

10. Montana First Judicial District Court, Lewis and Clark County, Cause No. ADV-2007-787, Robert Baxter et al v. State of Montana, Decision and Order, 5 December, 2008, p. 3, lines 1-3. Accessed 2009-07-15

11. "Life expectancy can be shortened with the Vascular Type of EDS due to the possibility of organ and vessel rupture. Life expectancy is usually not affected in the other types." Ehlers-Danlos National Foundation, *What is EDS?* ([http://www.ednf.org/index.php?option=com\\_content&task=view&id=1347&Itemid=88888968](http://www.ednf.org/index.php?option=com_content&task=view&id=1347&Itemid=88888968)) Accessed 2009-07-15. See also Ehlers-Danlos National Foundation, *Vascular Urgent Information*. ([http://www.ednf.org/index.php?option=com\\_content&task=view&id=1289&Itemid=88889107](http://www.ednf.org/index.php?option=com_content&task=view&id=1289&Itemid=88889107)) Accessed 2009-07-15.

12. "Compassion and Choices participated in the petition on behalf of two terminal Montana patients and four physicians that resulted in the December court ruling in their favour." Compassion and Choices Press Conference re: Janet Murdock, 3 April, 2009. ([http://www.compassionandchoices.com/documents/Janet\\_Murdock\\_PressConf\\_April09.mp3](http://www.compassionandchoices.com/documents/Janet_Murdock_PressConf_April09.mp3)) Accessed 2009-07-14

13. Details concerning the physicians are taken from documents filed by Compassion and Choices. Three of the affidavits are in a single .pdf file: Affidavit of Stephen Speckart, MD, dated 29 June, 2008 (hereinafter "Speckart"); Affidavit of Lar Autio, MD, dated 30 June, 2008 (hereinafter "Autio"); Affidavit of George Franklin Risi Jr., MD, 30 June, 2008 (hereinafter "Risi"). ([http://www.compassionandchoices.org/documents/speckart affadavit.pdf](http://www.compassionandchoices.org/documents/speckart%20affadavit.pdf)) Accessed 2009-07-14. One affidavit is in a separate .pdf file: Affidavit of C. Paul Loehnen, MD, dated 30 June, 2008 (hereinafter Loehnen). (<http://www.compassionandchoices.org/documents/loehnenaffadavit.pdf>) Accessed 2009-07-14

14. Autio, para. 16; Loehnen, para. 21; Risi, para. 27; Speckart, para. 23

15. Autio, para. 18; Loehnen, para. 23; Risi, para. 25; Speckart, para. 29

16. Details and transcribed quotations are from Compassion and Choices Press Conference re: Janet Murdock, 3 April, 2009. ([http://www.compassionandchoices.com/documents/Janet\\_Murdock\\_PressConf\\_April09.mp3](http://www.compassionandchoices.com/documents/Janet_Murdock_PressConf_April09.mp3)) Accessed 2009-07-14.

17. The Missoulian, 4 July, 2009. Janet Murdock, 1941-2009. ([http://www.missoulian.com/articles/2009/07/04/obits/01sun/03\\_june28.txt](http://www.missoulian.com/articles/2009/07/04/obits/01sun/03_june28.txt)) Accessed 2009-07-15.

18. Compassion and Choices news release, 16 June, 2009, *Montana Death with Dignity Advocate Dies Without the Aid in Dying She Sought*. ([http://compassionandchoices.org/documents/Release Janet Murdock Dies final.pdf](http://compassionandchoices.org/documents/Release%20Janet%20Murdock%20Dies%20final.pdf)) Accessed 2009-07-15

19. Compassion and Choices news release, 16 June, 2009, *Montana Death with Dignity Advocate Dies Without the Aid in Dying She Sought*. ([http://compassionandchoices.org/documents/Release Janet Murdock Dies final.pdf](http://compassionandchoices.org/documents/Release%20Janet%20Murdock%20Dies%20final.pdf)) Accessed 2009-07-15
20. U.S. Census Bureau, *State & County Quick Facts: Missoula, Montana*. (<http://quickfacts.census.gov/qfd/states/30/3050200.html>) Accessed 2009-07-16
21. Washington Death With Dignity Act RCW 70.245.190, Section 1(d) ([http://www.consciencelaws.org/Conscience-Laws-USA/Conscience-Laws-USA-06.html#Washington\\_Death\\_With\\_Dignity\\_Act](http://www.consciencelaws.org/Conscience-Laws-USA/Conscience-Laws-USA-06.html#Washington_Death_With_Dignity_Act)) ; Oregon Revised Statutes (Death With Dignity Act ) 127.885 s.4.01., Section 4 ([http://www.consciencelaws.org/Conscience-Laws-USA/Conscience-Laws-USA-05.html#Death\\_With\\_Dignity\\_Act](http://www.consciencelaws.org/Conscience-Laws-USA/Conscience-Laws-USA-05.html#Death_With_Dignity_Act));The Belgian Act on Euthanasia (2002) Chapter VI: Special Provisions, Section 14. (<http://www.consciencelaws.org/Conscience-Laws-Belgium/LawBelgium.html>)
22. For example, 54 percent of respondent physicians in a 1994 Washington State study thought euthanasia should be legal in some circumstances, but only 33 percent were actually willing to perform it. Cohen, Jonathan S , Fihn, Stephan D, Boyko, Edward J, Jonsen, Albert R and Wood, Robert W., *Attitudes toward Assisted Suicide and Euthanasia among Physicians in Washington State*. NEJM, Volume 331:89-94, July 14, 1994, Number 2. (<http://content.nejm.org/cgi/content/abstract/331/2/89>) Accessed 2009-07-16) Similarly, a 1996 Michigan survey found 56% of physicians supported legalization of assisted suicide, but only 35% said they "might participate." Bachman, Jerald G, Alceser, Kirsten H, Doukas, David J, Lichtenstein, Richard L, Corning, Amy D., and Brody, Howard, *Attitudes of Michigan Physicians and the Public toward Legalizing Physician-Assisted Suicide and Voluntary Euthanasia*. NEJM, Volume 334:303-309, February 1, 1996, Number 5. (<http://content.nejm.org/cgi/content/abstract/334/5/303>) Accessed 2009-07-16.
23. O'Reilly, Kevin B., "Montana court OKs doctor-assisted suicide." American Medical News, 29 December, 2008. (<http://www.ama-assn.org/amednews/2008/12/29/prsa1229.htm>) Accessed 2009-07-16
24. "Policy, Montana Medical Association Upon Physician Assisted Suicide," 2009-02-21, MMABoT, 54th IM (Feb. 21, 2009). The policy is reproduced in Appendix B of the *Brief of Amici Curiae Family Research Council et al*, Supreme Court of the State of Montana, Case No. DA 09-0051, *State of Montana et al Appellants vs. Robert Baxter et al Appellees*. (<http://www.alliancedefensefund.org/UserDocs/MontanaAmicus.pdf>) Accessed 2009-07-16.
25. Person, Daniel, "Doctors proving reluctant to assist in patient deaths." *The Bozeman Daily Chronicle*, 7 April, 2009. (<http://bozemandailychronicle.com/articles/2009/04/04/news/40suicide.txt>) Accessed 2009-07-16. Strictly speaking, Hopcraft's statement that Compassion and Choices did not know the opinion of each Montana physician was accurate, but it seems disingenuous in light of the

official position of the Montana Medical Association.

26. O'Reilly, Kevin B., "Montana judge rejects stay of physician-assisted suicide ruling." American Medical News, 29 January, 2009.

(<http://www.ama-assn.org/amednews/2009/01/26/prsd0129.htm>) Accessed 2009-07-16

27. Compassion and Choices, *Seven Principles for Patient-Centered End-of-Life Care*, Principle 5. ([http://www.compassionandchoices.org/care/Patient\\_Principles](http://www.compassionandchoices.org/care/Patient_Principles)) Accessed 2009-07-17

28. *The Missoulian*, 4 July, 2009. Janet Murdock, 1941-2009.

([http://www.missoulian.com/articles/2009/07/04/obits/01sun/03\\_june28.txt](http://www.missoulian.com/articles/2009/07/04/obits/01sun/03_june28.txt)) Accessed 2009-07-15.

29. Compassion and Choices news release, 16 June, 2009, *Montana Death with Dignity Advocate Dies Without the Aid in Dying She Sought*.

([http://compassionandchoices.org/documents/Release Janet Murdock Dies final.pdf](http://compassionandchoices.org/documents/Release%20Janet%20Murdock%20Dies%20final.pdf)) Accessed 2009-07-15

30. Quebec Health Minister Philippe: "In Quebec, our doctors at the present time don't feel comfortable doing abortions later than 22 weeks. From 20 to 22 weeks they're all done in Sherbrooke, after that we still don't have the capacity to do them here." "Quebec hopes to offer late-term abortions." *CBC News*, 10 September, 2004.

([http://www.cbc.ca/story/canada/national/2004/09/10/abortions\\_lateterm040910.html](http://www.cbc.ca/story/canada/national/2004/09/10/abortions_lateterm040910.html)) Accessed 2006-06-13. Commenting on the situation, Dr. Henry Morgentaler, whose court case overturned all legal restrictions on abortion in Canada, said, "We don't abort babies, we want to abort fetuses before they become babies. . . Around 24 weeks I have ethical problems doing that." "Quebec hopes to offer late term abortions." *Canadian Press*, 12 September, 2004.

([http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1094935301055\\_7?hub=Canada](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1094935301055_7?hub=Canada))

Accessed 2009-06-02. Morgentaler had initially urged unrestricted legalization of abortion during the first 12 weeks of pregnancy. In 1989 he was performing abortions up to 16 weeks, and by 1996 would perform abortions on women 18 weeks pregnant. Dunphy, Catherine, *Morgentaler: A Difficult Hero*. Random House: Toronto, 1996, p. 62-64, 339.